88- 1753

Supreme Court, U.S.
FILED
MAR 20 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No.

S.T., on behalf of her minor child, N.T.,

Appellant

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE AND WARREN ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

Respondents

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

JURISDICTIONAL STATEMENT

Joseph F. Shanahan
RD 2 Box 105
Lambertville, New Jersey
08530
609-397-3158

Date 13 April 1989

57pp

QUESTIONS PRESENTED

1. Whether the mandating of petitioner's daughter into a drug education class in the Millville Senior High School over her objections, for reasons of conscience, did violate her constitutional right to the free exercise of religion under the First Amendment.

2. Whether the non-federal grounds stated in the decision of the Appellate Divion, New Jersey Superior Court, dated 22 June 1988, were adequate to support the decision.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
INDEX TO APPENDIX	iii
TABLE OF AUTHORITIES	iii
JURISDICTIONAL STATEMENT . . .	1
OPINIONS BELOW	2
JURISDICTION	3
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED . .	5
STATEMENT OF THE CASE	8
RAISING THE FEDERAL QUESTION . . .	8
THE QUESTION IS SUBSTANTIAL . . .	11
POINT ONE	12
THE MILLVILLE BOARD OF EDUCATION MANDATED APPELLANT'S DAUGHTER INTO A DRUG EDUCATION CLASS OVER HER OBJECTION FOR REASONS OF CONSCIENCE THEREBY VIOLATING HER RIGHT TO THE FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT	
POINT TWO	23
THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE APPELLATE DIVISION, SUPERIOR COURT	

Page

OF NEW JERSEY BECAUSE THE NON-FEDERAL GROUNDS STATED IN THE DECISION WERE NOT ADEQUATE TO SUPPORT THE DECISION

CONCLUSION 28

APPENDIX

A. Order of Supreme Court of New Jersey, dated December 21,1988 29

B. Decision of the Appellate Division .. Superior Court, dated June 22,1988 31

C. Decision of State Board of Education, (excerpts) dated December 3,1986 34

D. Decision of Commissioner of Education, (excerpte) dated February 25,1986 38

E. Decision of Administrative Law Judge, . (excerpts) dated January 16,1986 41

F. Notice of Appeal to the United States . Supreme Court, dated March 17,1989 45

G. Certificate of Service (Jurisdictional Statement) .47

H. Notice of Appeal to the Supreme Court .. of New Jersey, dated July 7,1988 48

I. Notice of Appeal to Superior Court of . New Jersey, Appellate Division, dated January 8,1987 50

J. Certificate of Service (Corrected ... Jurisdictional Statement 52

TABLE OF AUTHORITIES

Page

Cases:

Cantwell v. Connecticut, 310 U.S. 296 .. 12
60 S.Ct. 900, 84 L Ed 1213 (1940)

Grausam v. Murphey, 448 F 2d 197 (1970)..16

Sherbert v. Verner, 374 U.S. 398, 10 L ..21
Ed 2d 965,83 S. Ct. 1790 (1963)

Ward v. Love, 253 U.S. 17, 64 L Ed ... 26
751, 40 S. Ct. 419 (1920)

United States Constitution

First Amendment 12,24

Statutes

N.J.S.A. 18A:4-28.7 12,15,25

N.J.S.A. 18A:35-4.7 13

N.J.S.A. 18A:40A-1 et seq. 17,19

Rules

N.J. R. 2:2-1 23

N.J.R. 2:12-9 23

Other Authorities

16 Am Jur 2d 16

Holy Bible 20,21

In the

Supreme Court of the United States

October Term, 1989

No.

S.T., on behalf of her
minor child, N.T.,

Appellant

v.

BOARD OF EDUCATION OF
THE CITY OF MILLVILLE
AND WARREN ELLIOTT,
PRINCIPAL OF MILLVILLE
SENIOR HIGH SCHOOL,

Respondents

ON APPEAL FROM THE SUPERIOR COURT
OF NEW JERSEY, APPELLATE DIVISION

JURISDICTIONAL STATEMENT

Appellant, S.T. appeals from the final decision of the Superior Court of New Jersey (Appellate Division) dated 22 June 1988,(Appeal to Supreme Court of New Jersey dismissed by Order of 21 December 1988) as

violative of her right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINIONS BELOW

The Order of the Supreme Court of New Jersey, dated 21 December 1988 appears in the Appendix hereto at Appendix A.

The Decision of the Appellate Division of the Superior Court, dated 22 June 1988 appears in the Appendix hereto at Appendix B.

Excerpts of pertinent pages of the State Board of Education, dated 3 December 1986, appears in the Appendix hereto at Appendix C.

Excerpts of pertinent pages of the Decision of the Commissioner of Education, dated 25 February 1986, appears at Appendix D.

Excerpts of pertinent pages of the Initial Decision of the Administrative Law Judge, dated 16 January 1986 appears at Appendix E.

JURISDICTION

This is an appeal from the non-implementation of a statute (N.J.S.A. 18A:35-4.7, Parents Right to Conscience Act) by the Millville (New Jersey) Senior High School, which statute, for reasons of conscience, permits the excusal of a student from the mandated drug education class upon the presentation of a written request from the student's parent or guardian, and in the instant case, the refusal of the principal to honor such request was violative of the First and

Fourteenth Amendment to the United States Constitution whether or not there is a state excusal statute. The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by U.S.C. Sect. 1257 (2). The following decisions sustain such jurisdiction to review: Largent v. Texas, 318 U.S. 418, 63 S.Ct 667, 87 L Ed 873 (1942), Lawrence v. State Tax Commission, 287 U.S. 276, 52 S. Ct 556, 76 L Ed. 1102 (1931).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

First Amendment, United States Constitution states in pertinent Part:

> " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..."

Fourteenth Amendment, United States Constitution states in pertinent part:

> " 1. ..... nor shall any state deprive any person of life, liberty,or property without due process of law; ... "

N.J.S.A. 18A:4-28.7 provides that:

> "On and after January 15,1971, each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades."

N.J.S.A. 18A:35-4.7 states:

> " Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom."

Pertinent excerpts from Chapter 40A SUBSTANCE ABUSE (NEW) eff. January 13,1988: N.J.S.A. 18A:40A-1, et seq.

N.J.S.A. 18A:40A-1 states in pertinent part:

> "Instructional programs on the nature of drugs,alcohol and controlled dangerous substances, as defined in... (C. 24:21-2), and their physiological, psychological, sociological and legal effects on the individual, the family and society shall be taught in each public school and in each grade from kindergarten through 12 in a manner adapted to the age and understanding of the pupils. ..... "

N.J.S.A. 18A:40A-2 states in pertinent part:

" The Commissioner of Education, in consultation with the Commissioner of Health shall develop curriculum guidelines for education programs on drugs, alcohol and controlled dangerous substances. ..... "

And in N.J.S.A. 18A:40A-6 :

" The Commissioner of Education, in consultation with the Commissioner of Health shall establish and administer a system for the evaluation of the effectiveness of instructional programs established pursuant to this act. .."

And in N.J.S.A. 18A:40A-8:

"The Legislature finds and declares that:
a. A significant number of young people are unfortunately already involved in the abuse of alcohol and other drugs; ..... "

And in N.J.S.A. 18A:40A-10:

" Each local board of education shall..... , in consultation with the Commissioner of Health establish a comprehensive substance abuse intervention, prevention and treatment referral program in the public elementary and secondary schools of the district. The purpose of the program shall be to identify pupils who are substance abusers, ... "

RAISING THE FEDERAL QUESTION

Appellant raised the claim of a violation of the First Amendment to the Constitution in her first pleading to the Administrative Law Judge, dated 12 December 1985 in which Point One of her argument was:

> "THE REFUSAL OF RESPONDENTS TO EXCUSE N.T. FROM THE DRUG EDUCATION CLASS OF THE MILLVILLE SENIOR HIGH SCHOOL IS AN ATTEMPT TO CIRCUMVENT THE INTENT OF N.J.S.A. 18A:35-4.7 AND TO RESTRICT PETITIONER'S RIGHT OF FREE EXERCISE OF RELIGION."
>
> (underline added)

This claim was reiterated throughout the entire course of administrative and court appeals but no decision on the matter was ever forthcoming from the trier of the facts or the appellate tribunals.

STATEMENT OF THE CASE

This appeal has to do with the constitutional right of appellant, S.T., on behalf of her minor daughter, N.T., to the free exercise of religion in that, N.T. had not

been excused from the eleventh grade drug education class in the health curriculum of the Millville Senior High School for the fall semester of 1985 even though, pursuant to the Parents' Right to Conscience Act (N.J.S.A. 18A:35-4.7) written requests for excusal were made to respondent principal on three occasions, all of which were denied.

On 4 November 1985 appeal papers were filed with the Commissioner of Education, Saul Cooperman, naming the principal and the Millville Board of Education as respondents. The Initial Decision by A.L.J. Lillard E. Law went against the appellant on the basis that such excusal from the drug education class was not warranted. (App E) Appeal was then made to the Commissioner of Education, who on 25 February 1986 affirmed "... the findings and conclusions of the Initial Decision. (App D)

Appeal was then made to the State Board of Education which "... reversed the Commissioner's decision" based on the fact that"... we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of statute. .... We further emphasize that our application of N.J.S.A. 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant to the statute."

Respondents appealed to the Superior Court, Appellate Division, which on 22 June 1988, without an opinion, dismissed the appeal as "... moot as to S.T.'s petition respecting N.T." since " N.T. has not been enrolled in Millville schools for several years,..." and "... the Legislature subsequently enacted L. 1987, c. 387 which repeals N.J.S.A.

18A: 4-28.7 (current drug education statute) ... and " The new program is not incorporated into the health education curriculum under the statute,... " (App B)

Appellant appealed this decision to the Supreme Court of New Jersey on the ground that it violated the First Amendment right to the free exercise of religion. The Supreme Court dismissed it on 21 December 1988. (App A)

THE QUESTION IS SUBSTANTIAL

ARGUMENT

POINT ONE

THE MILLVILLE BOARD OF EDUCATION MANDATED APPELLANT'S DAUGHTER INTO A DRUG EDUCATION CLASS OVER HER OBJECTION FOR REASONS OF CONSCIENCE THEREBY VIOLATING HER RIGHT TO THE FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT

The Free Exercise Clause of the First Amendment is included in the following excerpt from the United States Constitution:

> " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..."

and in Cantwell v. Connecticut, 310 U.S. 296,60 S Ct. 900, 84 L. Ed.1213 (1940) which made the above prohibition applicable to the States, it states at 303:

> " The First Amendment declares that Congress shall make no law respecting an establishment of relion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the States as incompetent as Congress to enact such laws. ..."

The State mandate is based on N.J.S.A. 18A:4-28.7, Drug education unit; secondary

school health curriculum, which states:

> " On and after January 15,1971,each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades."
>
> (underlines added)

The claim to excusal is based on the "Parents' Rights to Conscience Act of 1979" (N.J.S.A. 18A:35-4.7) which states as follows:

> " Any child whose parent or guardian presents to the school principal a signed statement that any part of the instructions in health, family life education or sex education is in conflict with his conscience, or sincerely held moral or religious beliefs shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom."
>
> (underlines added)

Pursuant to the above excusal statute appellant made written request to respond-

ent principal, Warren E. Elliott, for her daughter's excusal, dated 8 October 1985. In one of his answering letters denying such request (15 October 1985) stating:

> " We operate a public high school and as such cannot make your religious standards or ethics the norm. I certainly have considered your daughter's legal rights and simply disagree with you and your attorney as to policy, procedure, and state/federal statutes involved in this case."

Appellant appealed the principal's ruling on the basis that the excusal statute was clear on its face and was enacted later than the one incorporating the drug education class in the health curriculum. The Administrative Law Judge and the Commissioner of Education affirmed the principal relying on the State Senate Committee Statement as to the excusal statute prior to its passage by the legislature. They were reversed by decision of the State Board of Education on the basis of the legal principle of construction in-

volved which forbids any interpretation of a statute that is clear on its face. See Appendix C

Respondents then appealed to the Superior Court, Appellate Division which on 22 June 1988, without an opinion, dismissed the appeal as "... moot as to S.T.'s petition respecting N.T." since " N.T. has not been enrolled in Millville schools for several years,..." and "... the Legislature subsequently enacted L. 1987, c. 387 which repeals N.J.S.A. 18A;4-28.7"(current drug education class) and "The new program is not incorporated into the health education curriculum under the statute,..."

Appellant has appealed this decision to the Supreme Court of New Jersey on the ground that it violated her First Amendment right to the free exercise of religion. It was dismissed on 21 December 1988. See Appendix A

It is apparent from these decisions that both Courts omitted to rule on the constitutional issue raised which disregards the usual practice in such a case and flaws the final order. In 16A Am. Jur. 2d at S.446 under Constitutional Law it states:

> " At the same time,in every case where legislative abridgment of fundamental rights is asserted, the courts should be astute to examine the effect of the challenged legislation."

and at S. 458,p.243:

> " In determining the validity of legislation where violation of protected First Amendment freedoms has been alleged, a comprehensive review of the entire record is important to assure that no intrusion upon them has occurred."
>
> (underline added)

And it states in Grausam v. Murphey, 448 F 2d 197 (1970) at 201:

> "(1-3) Where, as in the present case, a violation of protected First Amendment freedoms has been alleged, a comprehensive review of the entire record is important to assure that no intrusion upon them has occurred."

For the above reason, the Appellate Division should have ruled on the constitutional issue presented. Its dismissal of the matter for mootness was error because the appellant's daughter received a failing grade in a class she should have been excused from and still has a vested right in having it expunged from her record. It was additional error for the Court to comment on the fact that "The new program is not incorporated into the health education curriculum..." because, in the face of the constitutional issue raised before it, what the statute says is irrelevant.

Appellant contends further that, even though N.J.S.A. 18A:40A-1, et seq. are presently controlling in the setting up and the implementing of these programs outside of the health curriculum as asserted in the Appellate Division's decision, they cannot avoid conflicting with the provisions of the First Amendment on

grounds of conscience. Whether or not there is a statutory type of excusal from these classes, the mandating of such classes for children of impressionable years over their objection and those of their parents for reasons of conscience is unconstitutional as infringing on the free exercise of religion. The basis of her constitutional argument is that she, as a Christian who believes that the Bible is the inerrant word of God,requested excusal for her daughter, N.T., from the drug education class at the Millville Senior High School. The reason for this request is her belief that the taking of drugs is a sin and contrary to God's Commandments and that the presence of her daughter at such a class might be a source of temptation to her and an occasion of sin. Her explanation of this is that in such a class drugs in general, with all its evil ramifications have to be discussed with

the students and, in her opinion, the surrounding circumstances are such that the classroom atmosphere might have a negative effect on her daughter's spiritual well being. Particularly,it is possible that some of the more worldly students in the class * are already involved with drugs and alcohol and might privately tell her the opposite of what the teacher is standing for. Can the local school board guarantee that this could not happen. There is always spiritual danger where there is propinquity with evil. As so aptly described by the immortal Alexander Pope in his Essay on Man:

> " Vice is a monster of so frightful mien,
> As to be hated needs but to be seen;
> But seen too oft, familiar with her face,
> We first endure,then pity, then embrace."

* It is noticed by the Legislature in one of the statutes just pased (N.J.S.A. 18A: 40A-8) where it states:

> " The Legislature finds and declares that:
> a. A significant number of young people are unfortunately already involved in the abuse of alcohol and other drugs;
> ..... "
>
> (underlines added)

To particularize her reasons of conscience appellant offers the following excerpts from the Bible which she believes that she is bound by and which have impelled her to seek such excusal for her daughter and is the only reason for so doing. They are:

a. From Ecclesiastes XII-13:

"... Fear God,and keep his commandments; for this is the whole duty of man. "

b. From Proverbs XXII-6

"Train up a child in the way he should go; and when he is old, he will not depart from it,"

c. From I Corinthians III-16,17

"Know ye not that ye are the temple of God, and that the Spirit of God dwelleth in you.

If any man defile the temple of God, him shall God destroy: for the temple of God is holy, which temple ye are."

d. From Proverbs XXIII-20,21

"Be not among winebibbers; among riotous eaters of flesh:
For the drunkard and the glutton shall come to poverty:..."

e. From Psalms CI-3,4:

" I will set no wicked thing before mine eyes: I hate the work of them that turn aside; it shall not cleave to me.

A froward heart shall depart from me: I will not know a wicked person."

f. And from Ephesians V-11,12:

" And have no fellowship with the unfruitful works of darkness, but rather reprove them.

For it is a shame even to speak of those things which are done of them in secret."

To further support appellant's position it states in Sherbert v. Verner, 374 U.S. 398, 10 L Ed 2d 965, 83 S Ct 1790 (1963):

"We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right. It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation,..."

(underlines added)

In the instant case, since appellant's objectives concerning the mischief to be suppressed coincides with the objectives of the State, it is apparent that, as far as she and her family are concerned, there is no overriding interest of the State which, by granting excusal, would conflict with her position. Therefore, the state interest in denying excusal is so miniscule as to be almost non-existent.

For the above reasons the mandating of appellant's daughter into a drug education class over her objections for reasons of conscience violates her right to the free exercise of religion under the First Amendment.

POINT TWO

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE APPELLATE DIVISION, SUPERIOR COURT OF NEW JERSEY BECAUSE THE NON-FEDERAL GROUNDS STATED IN THE DECISION WERE NOT ADEQUATE TO SUPPORT THE DECISION

The Order of the Supreme Court of New Jersey, dated 21 December 1988, which dismissed the appeal states in pertinent part:

> "...
> ORDERED that the appeal pending in this matter is dismissed pursuant to R.2:12-9."

R.2:12-9 states in pertinent part:

> " Where a party seeks certification to review a final judgment of the Appellate Division and also appeals therefrom, he shall state in the petition for certification all questions he intends to raise on the appeal. .... "

Relative to appeals to the New Jersey Supreme Court from final judgments, the rules governing the Courts of New Jersey state in pertinent part:

> R.2:2-1 (a) As of Right. Appeals may be taken to the Supreme Court from final judgments as of right: 1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or

this State; 2) in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division; ..... "

In this matter appeal had been made to the Supreme Court of New Jersey pursuant to 1) above based on Point Four of the Petition for Certification which stated:

" THE MANDATING OF APPELLANT'S DAUGHTER INTO THE DRUG EDUCATION CLASS IN QUESTION OVER HER OBJECTION FOR REASONS OF CONSCIENCE VIOLATED HER RIGHT TO THE FREE EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT

The non-federal grounds as asserted in the decision of the Appellate Division were:

1) "... N.T. has not been enrolled in Millville schools for several years, having completed her education in private school. The issues are therefore moot as to S.T.'s petition respecting N.T."

This is error because at the time N.T. was claiming excusal from the class pursuant to the statute in 1985 it was valid as subsequently declared so by the State Board of Education in December 1986. Therefore she

was entitled to excusal at the time and so the matter could not be moot because there was still a vested right claimed by N.T. that had not been resolved; the right to have her failing grade in the drug education class expunged from her record.

2) " Moreover, the Legislature subsequently enacted L.1987, c.387 which repeals N.J.S.A. 18A"4-28.7 and provides for a mandatory comprehensive education program on the nature and effects of drugs, alcohol and controlled dangerous substances. The new program is not incorporated into the health education curriculum under the statute, which has been codified as N.J.S.A. 18A:40A-1 et seq."

(underline added)

Appellant has contended in her Petition for Certification and still does that, even though N.J.S.A. 18A:40 A-1 et seq. are presently controlling in the setting up and implementing of these programs in the government schools without including a section for excusal on grounds of conscience, they cannot avoid conflicting with the provisions of the

First Amendment which were designed to protect the individual citizen from an oppressive government. She further contends that without a carte blanche type of excusal clause to allow for legitimate objections to mandatory attendance for reasons of conscience, such programs are unconstitutional as infringing on the free exercise of religion in that, in this case, they are mandating a child of impressionable years to a class which she believes to be an occasion of sin. In Ward v. Love County, 253 U.S. 17, 64 L ed. 751,40 S Ct 419 (1920), which was a proceeding by 67 Indians to recover moneys alleged to have been coercively collected from them by Love County, Oklahoma, as taxes on their allotments, which under the laws and Constitution of the United States were nontaxable, it states at 22:

> "The right to the exemption was a federal right, and was specially set up and claimed as such

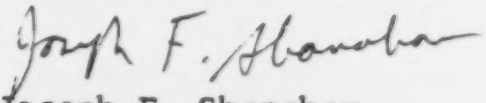
> in the petition. Whether the right was denied, or not given due recognition, by the Supreme Court is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support. ..... Of course, if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided."
>
> (underlines added)

For the above reasons, the grounds stated in the instant decision of the Appellate Division are plainly untenable and insufficient to support the decision and this Court has jurisdiction to review.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



Joseph F. Shanahan
Attorney for Appellant
RD 2 Box 105
Lambertville, New Jersey
08530
609-397-3158

March 17,1989

(Appendices follow)

Appendix A

SUPREME COURT OF NEW JERSEY
C-526 September Term 1988
29,143

S.T. on behalf of her minor child, N.T.,

Petitioner-Petitioner

v.

THE BOARD OF EDUCATION OF THE CITY OF MILLVILLE, et al.,

Respondents-Respondents

ON PETITION FOR CERTIFICATION

FILED
Supreme Court
Dec. 21,1988
Stephen W. Townsend
Clerk

To the Appellate Division, Superior Court,

A petition for certification of the judgment in A-2213-86T7 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal pending in this matter is dismissed pursuant to R.2:12-9.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 19th day of December 1988.

I hereby certify that the foregoing is a true copy of the original on file in my office

Stephen W. Townsend

Clerk of the Supreme Court
of New Jersey

Stephen W. Townsend
Clerk of the Supreme Court

Appendix B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2213-86T7

RECORD IMPOUNDED

S.T. on behalf of her minor child, N.T.

Petitioner-Respondent

v.

THE BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY, and WARREN E. ELLIOTT, Principal, Millville Senior High School

Respondents-Appellants

Argued March 15,1988 - Decided Jun 22,1988

Before Judges Antell, R.S. Cohen and Landau.

On appeal from a Final Decision of the State Board of Education.

Frederick A. Jacob argued the cause for appellant Board of Education of the City of Millville (Jacob & Robinson, attorneys; Mr. Jacob, on the brief).

Arlene Goldfus Lutz, Deputy Attorney General; argued the cause for appellant State Board of Education (W. Cary Edwards, Attorney General, attorney; Ms Lutz, on the brief).

Joseph F. Shanahan argued the cause for respondent.

PER CURIAM

The Board of Education of the City of Millville and Warren E. Elliott (Elliott), Principal of its senior high school (collectively Millville) appeal from a final decision of the State Board of Education (State Board) which granted the petition of S.T. that her daughter N.T. be excused from participation in the Millville 11th grade drug education program adopted pursuant to N.J.S.A. 18A:4-28.7.

N.J.S.A. 18A:4-28.7 provided:

> On and after January 15,1971, each school district having secondary school grades shall incorporate into its health education curriculum the recommended drug education unit provided for in Section 2 hereof during a minimum of 10 clock hours per school year as part of the ongoing health education curriculum for secondary school grades.

The opinion of the State Board was bottomed in a facial interpretation of N.J.S.A. 18A:4-28.7 and N.J.S.A. 18A:35-4.7, the "Parents Right to Conscience Act." N.T. has not been enrolled in Millville schools

for several years, having completed her education in private school. The issues are therefore moot as to S.T's petition respecting N.T. Moreover the Legislature subsequently enacted L. 1987, c. 387 which repeals N.J.S.A. 18A:4-28.7 and provides for a mandatory comprehensive education program on the nature and effects of drugs, alcohol and controlled dangerous substances. The new program is not incorporated into the health education curriculum under the statute which has been codified as N.J.S.A. 18A:40A-1 et seq.

It would serve no purpose to consider issues which are both privately mooted and rendered prospectively moot by the new legislation, so that an opinion would offer no useful public guidance.

The appeal is dismissed as moot.

I hereby certify that the foregoing is a true copy of the original on file in my office.

Jack M. Trubenbach
Clerk of Appellate Division

Appendix C

STATE BOARD OF EDUCATION

DECISION (EXCERPTS)

EDU #7052
C # 35-86
SB # 16-86

S.T., on behalf of her minor child, N.T.

PETITIONER-APPELLANT

V.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

RESPONDENTS-RESPONDENTS

Decide by the Commissioner of Education, February 25,1986

For the Petitioner-Appellant, Joseph F. Shanahan, Esq.

For the Respondents- Respondents, Jacob & Robinson (Frederick A. Jacob, Esq.)

This case involves the issue of whether the Parents Rights to Conscience Act of 1979, N.J.S.A. 18A:35-4.6 et seq., applies to a district board's drug education course mandated by N.J.S.A. 18A:4-28.7 so as to require a student's excusal

from the course where the parent presents that the course conflicts with his conscience or sincerely held moral or religious beliefs. .....

. . . . . .

The threshold question in this case is whether N.J.S.A. 18A:35-4.7 is applicable to the District's drug education course, which is mandated by N.J.S.A. 18A:4-28.7. . . . . .

. . . . . .

It is well established the meaning of a statute first must be sought in the language of the statute. ... If the language of a statute is clear and unambiguous on its face, we may not go beyond the words of the statute in order to devine the Legislature's intent. .....

. . . . . We find that the words of the statute involved here are clear and unambiguous, and that application of the language of each neither

results in conflict between them nor leads to absurd or anomalous results. .....

. . . . . .

Petitioner's request for excusal of her daughter from drug education meets the requirements of N.J.S.A. 18A:35-4.7, and we therefore find that, pursuant to the statute, the District must excuse Petitioner's daughter from the drug education part of its health curriculum without penalty. ... . However, we reiterate that we may not alter the applicable statutory provisions as they were enacted by the Legislature, and that we may not utilize the legislative history to create ambiguity in the otherwise clear language of the statute..... We further emphasize that our application of N.J.S.A. 18A:35-4.7 may not be colored by the fact that we may not share the beliefs of a parent seeking excusal pursuant the statute.

.. ..

. . . . . .

For the reasons set forth above, we reverse the Commissioner's decision. In doing so, we find that oral argument is not necessary in order for us to arrive at a fair resolution of this case and, therefore, deny the Board's motion for oral argument, which it filed after it submitted its exceptions to our Legal Committee's Report in this matter.

Alice Holzapfel opposed

Attorney exceptions are noted

December 3,1986

Date of Mailing Dec. 5, 1986

Appendix D

COMMISSIONER OF EDUCATION

DECISION (EXCERPTS)

S.T. on behalf of her minor child, N.T.

PETITIONER

V.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

RESPONDENTS

SYNOPSIS

Parent sought daughter's excusal from high school's drug education course of study mandated by N.J.S.A. 18A:35-4 and 18A:4-28.7 and alleged violation of statutory rights under "Parents Rights to Conscience Act. " (N.J.S.A. 18A:35-4.6 et seq)

Initial decision found that N.J.S.A. 18A:35-4.6 was inapplicable as the basis for N.T.'s excusal from any portion of the Board's drug education course mandated

under N.J.S.A. 18A:4-28.7. ALJ determined legislative intent when N.J.S.A. 18A:35-4.6 was enacted was to eliminate drug education from the list of courses from which pupils could be excused upon parental request. Therefore, the Board must comply with its obligation to provide minimum of 10 hours of drug education per year to all pupils. No opinion was rendered on whether petitioner's First Amendment rights were violated. Petition was dismissed.

Commissioner affirmed findings and determination in initial decision relying on legislative history and Senate Committee Statement to establish that clear intent was not to excuse any pupil from mandatory 10 hours of drug education which was intended to provide effective instruction for responsible attitudes and habits relative to drug use. As to argument that initial decision failed to rule on a possible viola-

tion of a federal constitutional question, the Commissioner reiterated that he may not decide the constitutionality of a statute.

. . . . . .

. . . . . .

The Commissioner further finds that pupil excusal from certain portions of the Board's health curriculum under N.J.S.A. 18A:35-4.7, is inapplicable to the statutory requirements as mandated by N.J.S.A. 18A:4-28.7. Finally, the Commissioner hereby directs that all pupils under the Board's direction and control who are subject to N.J.S.A. 18A:4-28.7 be required, without exception, to complete successfully a minimum of ten (10) clock hours of instruction in drug education.

IT IS SO ORDERED.

Saul Cooperman
February 25,1986 Commissioner of Education

Date of Mailing- February 25,1986

Appendix E

STATE OF NEW JERSEY

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 7052-85
AGENCY DKT NO. 378-11/85

S.T. ON BEHALF OF HER MINOR CHILD, N.T.,

Petitioner

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY, AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL,

Respondents

Joseph F. Shanahan, Esq., for petitioner

Frederick A. Jacob, Esq., for respondents (Jacob & Robinson, attorneys)

Record Closed December 31,1985 Decided: January 16,1986

BEFORE LILLARD E. LAW, ALJ: (Pertinent Excerpt of Decision)

Petitioner, S.T. the mother of N.T. a minor pupil enrolled in the eleventh grade at the Millville Senior High School under the direction and control of the Board of Education

of the City of Millville (Board) alleges, among other things, that the Board is in violation of her statutory right under N.J. S.A. 18A:35-4.7 to have N.T. excused and removed from the Board's required drug education course of study which is mandated by N.J.S.A. 18A:35-4 and N.J.S.A. 18A:4-28.7. Petitioner filed before the Commissioner of Education a verified petition for Declaratory Judgment, together with an Application for Stay of Current Action taken by the Board in refusing to excuse N.T. from its drug education class.

.....

The parties stipulated to the material and relevant facts of the matter, therefore eliminating the need for a plenary hearing.

. . . . . .

. . . . . .

Given these historical facts and circumstances, this administrative tribunal can apply no other construction to the statute

than that intended by the Legislature. In construing a statute, the initial task of the court is to seek the legislative intent, and to that end it must consider any history which may be of aid. .... Generally a court's duty in construing a statute is to determine the intent of the Legislature. ... Having considered the statute, N.J.S.A. 18A:35-4.6, together with its legislative history, I FIND and CONCLUDE that the Legislature did not intend to include the statutorily mandated drug education program as one to which pupils may be excused therefrom.

. . . . . .

Therefore, I FIND and CONCLUDE that N.J.S.A. 18A:35-4.6 is inapplicable to warrant an excuse from any portion of the Board's drug education program as mandated by N.J.S.A. 18A:4-28.7.

No opinion is expressed, nor decision made, on the question of whether or not petitioner's rights to freedom of religious expression

have been violated or abridged, under the First Amendment to the United States Constitution, as alleged.

I hereby FILE my Initial Decision with Saul Cooperman for consideration.

Lillard E. Law, ALJ

16 Jan. 1986

Appendix F

IN THE SUPREME COURT
OF THE STATE OF NEW JERSEY
C-526 September Term 1988
29,143
A-2213-86T7

S.T. ON BEHALF OF HER
MINOR CHILD, N.T.,

Appellant

v.

THE BOARD OF EDUCATION OF
THE CITY OF MILLVILLE AND
WARREN E. ELLIOTT, PRINCIPAL
OF MILLVILLE SENIOR HIGH
SCHOOL

Respondents

RECEIVED
MAR. 17 1989
SUPREME COURT
OF NEW JERSEY

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that S.T. on behalf of her minor child, N.T., the appellant above-named, hereby appeals to the Supreme Court of the United States from the final decision of the Superior Court of New Jersey, Appellate Division and from the final Order of the Supreme Court of New Jersey dismissing

appellant's appeal and entered in this action on December 21,1988.

This appeal is taken pursuant to 28 U.S.C. S. 1257 (2).

Joseph F. Shanahan
Counsel for Appellant

CERTIFICATION (A-2213-86T7)

This is to certify that on this 17 day of March, 1989 three copies each of this notice of appeal to the Supreme Court of the United States on behalf of appellant were hand delivered or mailed with postage prepaid to the offices of the following:

Frederick A, Jacob, Esq.
Jacob & Robinson
600 Main Street
Millville, New Jersey 08332

Arlene Lutz, Deputy Attorney General
Richard Hughes Justice Complex
Trenton, New Jersey 08625

Joseph F. Shanahan

APPENDIX G

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of March 1989 three copies of the Jurisdictional Statement were hand delivered or mailed with postage pre-paid to the offices of the following:

Frederick A. Jacob, Esq.
Jacob & Robinson
600 Main Street
Millville, New Jersey 08332

Arlene Lutz, Deputy Attorney General
Richard Hughes Justice Complex
Trenton, New Jersey 08625

Joseph F. Shanahan
Joseph F. Shanahan
Attorney for Appellant

Appendix H

JOSEPH F.SHANAHAN
RD 2 Box 105
Lambertville, New Jersey 08530
609-397-3158
Attorney for Petitioner- Respondent

S.T. on behalf of her minor child, N.T.

Petitioner-Respondent

v.

BOARD OF EDUCATION OF THE CITY OF MILLVILLE, CUMBERLAND COUNTY AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL

Defendants- Appellants

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-2213-86 T7

Civil Action

NOTICE OF APPEAL TO THE SUPREME COURT OF NEW JERSEY

TO: Frederick A. Jacob, Esq. , Attorney for Defendants- Respondents
600 Main Street
Millville, New Jersey 08332

Notice is hereby given that S.T., on behalf of her minor child, N.T., petitioner-

respondent, appeals to the Supreme Court of New Jersey from the whole of the decision of the Appellate Division of the Superior Court (the judges sitting therein being Melvin Antell, Richard Cohen and David Landau) entered on June 22, 1988 in favor of defendant-appellants and reversing the decision of the State Board of Education, dated December 3,1986.

Joseph F. Shanahan
Attorney for Petitioner-
Respondent

Dated 7 July 1988

Docket No. 29,143
A-2213 86T7

A notice of appeal in the above matter was received by this office on 7/7/88

Stephen Townsend

August 29,1988

Appendix I

NOTICE OF APPEAL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

S.T., on behalf of her minor child, N.T.,

Petitioner-Appellant

vs

BOARD OF EDUCATION OF CITY OF MILLVILLE, CUMBERLAND COUNTY, AND WARREN E. ELLIOTT, PRINCIPAL OF MILLVILLE SENIOR HIGH SCHOOL

Respondents-Respondents

Attorney of Record

Jacob and Robinson
600 W. Main Street, P.O. Bx 429
Millville, New Jersey 08332
609-825-0700
Attorney for Respondents

On Appeal From
State Board of Education
State Board Docket No. 16-86
A.L.J. Lillard E. Law

Notice is hereby given that all named respondents herein appeal to the Superior Court of N.J., Appellate Division, from the judgment entered in this

action on December 3,1986 in favor of

S.T., on behalf of her minor child, N.T.,

petitioner-appellant

Notice of Appeal has been served on:

State Board of Education

S.T., on behalf of her minor child, N.T.,

Joseph F. Shanahan, Esq. RD 2 Box 105
Lambertville, N.J. 08530,

W. Cary Edwards, Attorney General CN 080
Trenton, N.J. 08625

I hereby certify that I have served a copy of this notice of appeal on each of the persons required as indicated above

January 8, 1987

Frederick A. Jacob, Esq.

Forwarded to Appellate Division, certified mail , January 8,1987

Appendix J

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of April 1989 three copies of the corrected Jurisdictional Statement were hand delivered or mailed with postage prepaid to the offices of the following:

Frederick A. Jacob, Esq.
Jacob and Robinson
600 Main Street
Millville, New Jersey 08332

Arlene Lutz, Deputy Attorney General
Richard Hughes Justice Complex
Trenton, New Jersey 08625

Joseph F. Shanahan
Attorney for Appellant